FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No.19/2007
(Nirmala Madhukar Ingole Vs. Smt. Manjurabai Bhimrao Vidhate through Lrs.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. A.K. Choube, Adv. for the appellant.
Mr. A. A. De, Adv. for R-1.
Mr. Dhumale h/f Mr. Parchure Adv. for R-2.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 29th August, 2007.

Heard the learned counsel for the parties.

The appellant is the original plaintiff. The plaintiff had filed a suit for possession of the suit field from the defendant no.2. The defendant no.1 is the step mother of the plaintiff. According to the plaintiff, the defendant no.1, taking advantage of her status, caused plaintiff to sign the sale deed in favour of the defendant no.2. This sale deed was effected without the permission of the District Judge. According to the plaintiff, she had not completed 21 years of age on the date of execution of the sale deed. She was married in or about the month of May, 1958. According to the plaintiff, she had not received any consideration from the defendant no.1 towards the execution of the sale deed and later on, she became aware that a fraud

was played on her. The suit was instituted on 23rd February, 1968.

The defendant no.1 denied that the birth date of the plaintiff was 26/10/1938. She, however, admitted that she is the step mother of the plaintiff. She further admitted that she was appointed as guardian of the plaintiff in M.J.C. No. 31/51. The other allegations were denied by her. She pleaded that the plaintiff was major at the time of execution of the sale deed.

The defendant no.2 filed the written statement and denied the claim of the plaintiff in its totality. The defendant no.2 denied that the date of birth of the plaintiff was 26/10/1938. The other facts pleaded in the plaint were also denied. It was, in fact, pleaded by the defendant no.2 that the entire consideration was paid to the plaintiff before the Sub Registrar at the time of registration of the sale deed. It was also pleaded that the plaintiff had signed the sale deed and executed the same in favour of the defendant no.2 along with the defendant no.1.

Both the trial and the first appellate Courts came to a conclusion that the plaintiff had not produced any cogent material on record to show that the plaintiff had not completed 21 years of age on the date of execution of the sale deed i.e. on 16/3/1958.

The evidence tendered by the plaintiff on record for proving her age was discarded by the trial Court for justifiable reason. The Courts concurrently held that the suit filed by the plaintiff for possession of the suit property was barred by limitation. The trial Court, therefore, dismissed the suit of the plaintiff for possession of the suit property. The Courts concurrently held that the defendant no.1 had not influenced the plaintiff and the plaintiff failed to prove that she has not received any consideration towards the execution of the sale deed. The Courts also held that the sale deed was not void for want of permission to sell the suit field from the District Judge. The plaintiff had utterly failed to prove that on the date of the execution of the sale deed i.e. on 16/3/1958, she had not attained the age of 21 years.

The findings recorded by both the Courts are pure findings of facts and are based on a proper appreciation of the material evidence on record. No substantial question of law arises in the present second appeal. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP